CHAPTER X.

Certain Revenue Matters.

Land tenures.

Regarding agricultural land tenures you should consult the Bombay Survey and Settlement Manual, Vol. I, 1935. Ch. I-III give a historical account of the Land Revenue system, Ch. XI deals with the normal survey tenure and with the new "inalienable" tenure under the Land Revenue Code, and Chapter XII with "Inam" tenures. There is also another tenure—the impartible tenure—given under Land Revenue Rules 37 (4) and designed to stop the fragmentation of holdings.

Inalienable tenure.

You will probably meet a number of applications from occupants of inalienable land to convert their holdings into ordinary survey (i.e., transferable) tenure on payment of so many multiples of the assessment. Such applications should almost always be refused, as, whatever the occupant's protestations may be, he is probably the dupe of some richer or more intelligent individual who wants to buy the land from him below its real value, thinking that the soft hearted Assistant Collector will not demand from a poverty stricken Warli the full difference in the value of the land on the two tenures. Land is given on the inalienable tenure at a much less occupancy price than on the transferable tenure, and if the occupant wants to change the tenure, Government is entitled to take the full difference between the prices, as the occupant is obtaining a valuable saleable addition to his property.

This inalienable tenure, which disallows sale, mortgage, etc., of land, is particularly necessary in

grant of land to cultivators belonging to backward or forest tribes. These owing to their imprudent and often intemperate habits, their lack of education and their ignorance of commercial morality, are liable to be exploited by their more intelligent neighbours and swindled out of what land they have, with the result that they must inevitably sink to the position of landless labourers.

The present generation, or next few generations, of these tribes may be victimised by the money-lender who keeps them almost as serfs, advancing them grain and cash and in return taking all the produce from the land except enough to keep the cultivator and his family alive. But so long as their land is on inalienable tenure and the Revenue authorities are vigilant, the money-lender will not be able to obtain ownership of the land nor to evict the occupants; and therefore, if and when education and Village Improvement will, (as it is to be hoped they will) render the Bhil and other jungle tribes better cultivators anxious for a higher standard of living, their ancestral land will still be available to give them a far better opportunity of economic release than if they were mere landless serfs.

This should be borne in mind when an unintelligent or unjust subordinate suggests that because an improvident Warli has passed a sale deed or mortgage to the Savkar for his inalienable tenure land, therefore the land should be forfeited from the Warli and sold by auction or given to someone else e.g., the Savkar, on payment of occupancy price. The object of the tenure is not to punish the owner who alienates his

land, but to prevent him doing so. Therefore normally, of you find someone has sold inalienable tenure land, forfeit it to Government for breach of the condition of tenure, thus extinguishing any right created by the transaction with private parties, and then regrant it on inalienable tenure to the previous owner for a nominal occupancy price.

Non-agricultural use.

An occupant of land held on the Survey Tenure cannot use it for any purposes other than agricultural, except with the permission of Government. If a cultivator wants to build a house in his field and let it out to a lawyer to live in, he must get Government's permission and will have to pay a higher rate of assessment on the area converted for non-agricultural use. But if a cultivator build in his field a house to live in *himself*, he is not converting it to non-agricultural use, because as an agriculturist he is entitled to have his farm house on his land. In the same way if he wants to put up a cattle-shed, or a shed for an oil engine to pump water to irrigate his land, these are agricultural uses and no permission is required and *no altered assessment is leviable.* Subordinate officials are sometimes inclined to imagine that any kind of building in a survey number needs permission and levy of higher assessment, and hardship is thus caused to cultivators anxious to improve their land. Therefore this point must be watched.

No permission is required to convert Inam land into non-agricultural use.

The application to convert to non-agricultural use is covered by Land Revenue Code Sections 45 and 65

and Land Revenue Rules Ch. XIV Rule 80 seq. The following points should be noted :—

(1) The application must be made by the person who is entered in the Record of Rights as occupant, or accompanied by a statement of this occupant that he agrees to the application being made. It should be accompanied by an extract of the Record of Rights for the land concerned.

(2) You must on receipt at once send a written acknowledgment of the receipt of the application.

(3) Final orders on the application have to be passed after due inquiry *within three months* of the receipt of the applications. If orders are not passed during this period, no condition can be imposed.

(4) Inform the applicant clearly as to the conditions of altered assessment, building regulations etc. prescribed in the locality, and ask whether he agrees to these.

(5) State clearly that altered assessment will be levied on the whole area for which permission is asked.

(6) In any locality where much building is taking place or is likely to take place, ask the applicant to send a large scale plan showing the area to be converted and the buildings proposed thereon.

Unless you pass final orders within three months of receipt of the application, the applicant is entitled to convert the land to non-agricultural use without restriction and Government will be unable to prevent the erection of unsuitable buildings or the use of land for unsuitable purposes. It is thus most important that non-agricultural use applications be disposed of

within the statutory period. Government in their G.R., R.D., No. 3511/24, dated 8th January 1927, warned officers that they will be personally held responsible for any delays that occur in such cases. Therefore it is well to keep a separate list of non-agricultural applications and to inspect it personally at frequent intervals to see that no case is getting behind-hand. When sending such applications to Talukas for report, always fix a date by which the information is to be supplied.

The regulations regarding Non-agricultural assessment vary in various localities and districts and you should obtain from your office the orders which apply to towns and villages in your charge.

When building has been done without permission, in theory it is lawful to evict the occupant under Land Revenue Code Section 48 (*a*); but this is very seldom necessary, and the failure to obtain permission is usually condoned by the imposition of a fine under Section 65.

It is well to remember, however, that eviction is possible, and occasionally the threat of its enforcement is a useful means of inducing a person who has put up, without permission, an objectionable building in an unsuitable locality, to remove it to a better place.

Remember that the larger Municipalities have building regulations, with which the intending builder will have to comply. Though he may have obtained permission to convert his land to Non-agricultural use, this will not absolve him from the observance of the Municipal regulations.

Encroachments.

Encroachments are some of the more troublesome matters with which the Assistant Collector

will have to deal. They may be broadly said to be of two kinds.

(*a*) Where an encroachment is made on a piece of land which is entered in the Revenue Records as the property of Government, for instance when a man cultivates a portion of an unoccupied Survey Number, or of a common grazing ground, or of a public road between Survey Numbers. In all these cases even if the boundary marks have been removed, the Survey records will enable you to find out the boundary accurately and to see whether any encroachment has taken place. If it has, you take action under Section 61 of the Land Revenue Code, levying assessment and a suitable fine, and not forgetting to evict the encroacher.

Of course there may be some cases where it is not necessary to evict him but instead you may grant him the land encroached upon at a fair price, as for instance when a man cultivates an unwanted corner of a nala bed contiguous to his own field and no inconvenience is caused to the public.

(*b*) Encroachments within village sites, where normally no Survey has been introduced, are more difficult to deal with, because there is no record of the rights of Government and private parties over unbuilt areas. Many vacant and unoccupied pieces of land in villages have owners in the descendants of those whose houses once stood on the particular sites. Many houses' verandahs, sheds, steps, etc. are built on Government land assigned for public purposes such as roads, because no local official is vigilant enough to take notice of the first signs of occupation.

Such unauthorised occupation is often caused, if not excused, by the appalling delay which takes place in replying to any application for a plot of Government land in a village. If a villager has adjacent to his house a piece of Government land which he wants to buy to build a cowshed on, he will apply to the Assistant Collector. That petition, without it being seen whether all the necessary information is given therein, will be sent to the Taluka, and thence to the Circle Inspector, and then to the Village Officers, and will travel backwards and forwards from office to office gathering the relevant—and a lot of irrelevant—information. This process may literally take years, and only the most patient and law-abiding villager is prepared to wait indefinitely for permission to buy the land and put up his cowshed. It is much quicker and easier for him to chance the village officers spotting it, or to hand over an appropriate sum to a Circle Inspector to keep his eyes shut, and then for him to start to build the cowshed without troubling the authorities with application for the site.

Similarly, to improve the amenities of his shop, the Bania will put up a wooden platform sticking out into the village street. If nobody objects, he will replace it by a stone built one, and, if the Mamlatdar or Assistant Collector does not insist on his removing this, he will build permanent steps sticking well out into the road and probably so narrowing the street that two carts will not be able to pass.

It takes 60 years of continuous possession to create a prescriptive title against Government, but in most cases evidence as to when the encroachment began is

extremely scarce, and without evidence Government is not in a position to declare any occupation an encroachment and to insist on eviction. It is therefore most important that encroachments should be reported as soon as they occur so that the common evidence of villagers may be available, to say that Rama Hari's cattle shed was not there last year, or that last rains two carts could pass in front of Pragji Devji's grocery shop.

It is well to insist on all encroachments being reported in a set form that will give all details, a summary of all evidence available on either side, and a sketch plan. Otherwise you will have the case continually being sent back to the Village Officers to provide further information.

When dealing with encroachment cases familiarise yourself with local methods of describing boundaries in registered sale deeds, the length of the local cubit etc. and do not place much reliance on unregistered documents, the authenticity of the alleged antiquity of which is often dubious.

You may often find evidence that will be of value in a current encroachment case, if you look up filed encroachment cases from the same village. Such often contain sketch plans several years old, which may include the site now in dispute.

Where no public inconvenience is caused by an encroachment, it is often fair to make allowance for the inconvenience caused by Revenue Department delays, and to give an encroacher the choice between purchase of the site and eviction.

"In reports about and orders on cases where the ownership of the land is disputed, great care should be

taken to set forth clearly the documentary and oral evidence which is held to establish the Government title to the land. Orders of eviction should be carried out in strict accordance with the provision of Section 202, Land Revenue Code."

The following Government Circular, Revenue Department, No. 284/24, dated the 1st October 1937, giving a note of the Remembrancer of Legal Affairs, dated the 11th May 1937, is important and should be carefully noted :—

"In enquiries under section 37 (2) of the Bombay Land Revenue Code into alleged or suspected encroachments, it is important to bear in mind the words 'which are not the property of individuals or of aggregates of persons legally capable of holding property' occurring in that section. In order to prove that the land in question is his property a claimant may—

(1) produce satisfactory evidence as to the actual acquisition of title,

(2) claim adverse possession, or

(3) claim title based on possession (not proved to have continued for 60 years)."

In the case of a claim as at (2) or (3), the nature of the alleged possession has to be looked into. The following are some of the acts which, in the circumstances of the cases in which they took place, have been held by the Bombay High Court to be evidence of mere user not amounting to legal possession :

(1) tethering cattle,.

(2) using the land for throwing refuse,

(3) keeping fodder, grain and earth,

(4) erection of temporary otlas, or sheds for cows, goats and fowls.

In the case of a claim based on mere possession, the principle of law which is applicable is that possession is *prima facie* evidence of title, and gives a person title against the whole world except the person having a better title. This principle has been embodied in section 110 of the Indian Evidence Act which runs thus :

" When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."

When a claim to a piece or land is based on this section, an officer proceeding under section 37 (*2*), Land Revenue Code, should first see whether the alleged possession is such as to give rise to the presumption under this section of the Indian Evidence Act. As pointed out above, not every kind of user constitutes possession. A man may keep fodder or tether his cattle on a piece of land for reasons of convenience, without intending to exclude others from the use of the land and without objection from his neighbours or interference from the State, the revenue officers being satisfied that he does not intend to take possession of the land and is not asserting any kind of title. It is plain that such acts of user cannot constitute possession. If a temporary structure is erected on a piece of land, it may again not amount to possession, though if a structure stands for many years on a piece of land it would normally lead to a presumption of possession. No strict criteria, however, can be laid down as to what acts necessarily

connote possession and what do not. Criteria would vary with the circumstances of each case. The local pressure on land, the vigilance of neigbours or revenue officers, the period for which the acts of user have continued, the existence of a general custom allowing such acts without objection—these would be circumstances to be taken into consideration in appropriate cases in deciding the nature of the alleged possession. Where, however, an intention to exclude the possession, user or control of others is proved or can be presumed, however slight the actual acts of user, there should be no hesitation in deciding possession to be proved. Acts like erecting a permanent structure or putting up a substantial hedge, especially when such structure or hedge has stood for some time, would generally indicate possession.

If possession is found proved, the next question that would arise is, for how long has it existed? If there be evidence that Government was the owner of the land within 60 years, then such evidence can be used to rebut the *prima facie* title of the claimant arising under section 110 of the Indian Evidence Act, i.e., though the burden of proving that he is not the owner will be on Government, Government may discharge that burden sufficiently by showing their ownership within the past 60 years, and thus put the claimant to substantiate the *prima facie* title. If he does not succeed in this the land cannot be held to be his property within the meaning of section 37 (*1*) of the Land Revenue Code.

If, however, there be no evidence that Government was the owner of the land at any time within the past

60 years, then if the claimant's subsisting possession is held proved, it must be held that Government cannot prove a better title than his, though his title arises merely under section 110 of the Indian Evidence Act, i.e., is merely *prima facie* title to begin with. In such a case the land must be held to be the claimant's property, subject to any rights that third parties may be able to prove against him. In such a case his possession must necessarily be, or be presumed to be, of long standing, and would generally consist in overt acts clearly indicating exclusive control for a continuous period."

Land Acquisition work.

Though for very extensive acquisitions, a special Land Acquisition officer is usually appointed by Government, the ordinary Land Acquisition work in a Sub-Division is done by the Assistant Collector. Full instructions and advice are given in the Manual of Land Acquisition, 1936, and these *must* be studied, as the work has many pitfalls and your failure to observe formalities etc. may involve Government in heavy expenses.

In the acquisition proceedings several points need particularly to be watched. For instance the preliminary estimate of cost must be framed as accurately as possible (*vide* Manual paragraph 38 seq.). Never merely pass on a Mamlatdar's estimate, which is probably based on a Circle Inspector's opinion, which is based on what the Village Officers think—or don't think. All estimates should be supported by reasons and extracts from Record of Rights. In particular, Taluka Officers are liable to err over land which has

a Non-agricultural value, so check such carefully. An estimate which proves to be much less than the amount finally awarded will lead to trouble as there will not be financial provision for payment of so much money, and also to difficulties with your Collector. (*See* G. R. Confidential, R. D., No. 1879/24, dated 9th December 1936, the procedure under which you should note carefully.)

As in criminal cases, it will help you to keep the proceedings (L. A. Manual, page 136) in your own hand as far as possible, and not to leave these to a clerk, as you thus see that all formalities are complied with, and no formalities are omitted to invalidate all the proceedings, and that no unnecessary delay is taking place in your own or Taluka Offices to cause loss to Government or the parties.

Proceedings on the ground.

"In all important cases and most others it cannot be too strongly insisted upon that that the proceedings should be held on the ground which is being acquired in spite of the fact that an inspection may have been made under paragraph 90. This inspection for hearing will fully cover that 'valuation' inspection (paragraph 171). A pocket book and pencil is all that Acquiring officer needs for recording the proceedings on the ground; they can be written up in office afterwards. It is surprising how many spurious allegations will disappear when the parties are confronted on the ground. Moreover it is much more fair to the parties, who can point out boundaries, means of access, facilities for irrigation, condition and value of trees, and many points connected with a building

far more readily on the spot than in an office. Proceedings may relate to a single plot of unculturable land wanted for a gravel pit up to large proceedings involving the acquisition of thousands of acres. Of course a rigid rule cannot be laid down for all these cases, but no conscientious Acquiring Officer could possibly deal with a difficult or important case except on the ground."

(L. A. Manual, p. 51, Para. 148.)

Payment. Not only hold proceedings on the spot before you make your award, but also, when after the award there are a number of small payments to be made,—e.g. as when a road is constructed in open country, it may save much later trouble, if you take an advance from the Treasury (*vide* paragraph 259, L. A. Manual) and pay out cash on the spot, or in the village itself. Villagers better appreciate that they are being given a fair price, if they see their neighbours and themselves receiving silver rupees from the Assistant Collector, than if they get a notice that they will be paid so much on application at the Mamlatdar's office, which means the expenses of going to, and staying at, the Taluka, and—not impossibly—of feeing various underlings from the money. This procedure also discourages references to the Civil Court which, if your award is a proper one, can benefit the lawyers only.

Award. As regards the award itself, remember that you are acting in a quasi judicial capacity:

"It is the legitimate aim of all officers administering the Act to secure for the public all land required for the use of the State at the least burden to the tax-paying public; on the other hand, no one should be deprived

of his property even on the ground of State necessity without giving him at least as much as a prudent private purchaser would pay. Since the Act therefore imposes a burden on those whose land is taken, it must be interpreted like penal statutes strictly in favour of the private party and every irregularity prejudicing him is fatal to proceedings thereunder."

(L. A. Manual, p. 4, Para. 11.)

Your award must be fair both to the tax-payer, i.e., Government, and to the person dispossessed, and there must be no idea that you are awarding less than the proper value because this would benefit Government, or that you are overpaying the other party from a misplaced idea that Government with its bottomless purse can afford to be generous.

However fair your award, unless it is supported by adequate reasons, it may be upset in the Civil Court, and an excessively high compensation awarded for the land acquired (*vide* paragraph 296 seq.). A map of the locality with the rate per square yard, or per acre, fetched in all recent sales and the dates of the transactions etc. marked up on each plot sold etc. is most useful both to yourself in framing the award and to the Civil Court if a reference should be made. The necessary critical analysis of recent values drawn from dates, prices, position advantages, etc. can be made far more easily by reference to such a map than otherwise. With care you should be able to give such reasons for your award as will secure its acceptance by all reasonable owners and by the Civil Court in the case of others.

The Assistant Collector is very much concerned with the Watans of Village Officers and village servants, and a great deal of useful and interesting information regarding Watans and Watandars may be found in the preface of Phadnis's Watan Act which is well worth reading. The text of the Watan Act itself also needs careful study and Chapter X of the 1908 edition of the Assistant Collector's Manual, Part II, dealing with Inam and Watan lands is a useful Summary and is given as Appendix F. Watans.

On taking over your charge, look at all the Watan Registers in your office. If you find that some of them are in a most tattered and torn condition, issue instructions at once to have the defective parts re-copied. Your Sheristedar will not be enthusiastic as this will mean depriving him of the help of a clerk, while the latter is engaged in copying the Watan Registers, so, if the registers are in a particularly bad condition, you should report to the Collector, who may be able to give you a special clerk for this—or alternatively he will tell you that your office let the registers get torn, so you must see that your office re-copies them itself. Doing this will be useful experience in getting things done. Watan Registers.

In the same way when inspecting a Mamlatdar's office, personally see all the Watan Registers. They are very likely to be in the same condition as your own, or, as they deal with inferior village servants, who are more numerous than Village officers, in even worse. See that they are put in order.

In making appointments of Village Officers it is necessary to use common sense and not to Appointments.

accept a representative Watandar or his nominee as officiator, if he is obviously unfit. You can usually find a Section of the Watan Act which will enable you not to appoint him. But it is also important to remember that the estimation in which the position of a Watandar and its hereditary rights is held enables Government to get an enormous amount of most important Government work performed almost honorarily by the Watandars, and that the wishes of a representative Watandar should not be unnecessarily over-ruled.

It is necessary of course that a regular bad character should not be appointed Patil, and therefore in addition to notifying the watandars interested of the forthcoming appointment proceedings, you will have to inquire from the Mamlatdar whether the Representative Watandar whose turn it is to officiate, or the deputy whom he proposes to appoint, is a fit person to act as Patil. In the case of Police Patel appointments the Mamlatdar should *invariably* consult the Police Sub-Inspector, and, where a man is a bad character who will have to be rejected, a detailed report should be submitted by Mamlatdar or Police Sub-Inspector. Both officers however should avoid instructing subordinates as a regular routine to take statements of other watandars, villagers etc. about the proposed appointee. Such statements are usually worthless, and it is a nuisance to the villagers to be dragged off to the Taluka or elsewhere to have their statements written down.

Though once a man is appointed, your control over him is limited by the provisions of the Watan Act, yet there is in reserve the fear of the Watandar that, if he

or his deputy behave outrageously, his share in the Watan itself may be forfeited under sections 60 and 61 of the Watan Act.

Appointments of inferior village servants are always made by the Mamlatdars, but it is well to watch these appointments, to see that injustice is not done by a busy Mamlatdar leaving the appointments to a clerk or to the Village Officers, who may be influenced by extraneous considerations.